



U.S. Citizenship  
and Immigration  
Services

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FILE: EAC 02 264 50847 Office: VERMONT SERVICE CENTER

Date:

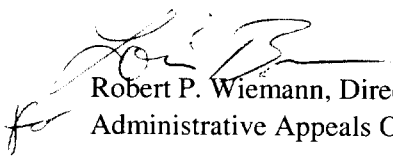
IN RE: Petitioner:  
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as an Other Worker Pursuant to Section 203(b)(3) of the  
Immigration and Nationality Act, 8 U.S.C. § 1153(b)(3)

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

  
Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The employment based immigrant visa petition was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected.

The petitioner seeks to classify the beneficiary as an employment based immigrant pursuant to section 203(b)(3) of the Immigration and Nationality Act, (the Act), 8 U.S.C. § 1153(b)(3), as an unskilled worker. The petitioner is an individual householder. He seeks to employ the beneficiary permanently in the United States as a live-in domestic. As required by statute, the petition is accompanied by an individual labor certification approved by the Department of Labor. The director determined that the petitioner had abandoned the petition and denied it accordingly.

The regulation at 8 C.F.R. § 103.2 states in pertinent part:

*(b) Evidence and processing—*

*(13) Effect of failure to respond to a request for evidence or appearance. If all requested initial evidence and requested additional evidence is not submitted by the required date, the application or petition shall be considered abandoned and, accordingly, shall be denied. (Original emphasis).*

In this case, on April 24, 2003, the director specifically instructed the petitioner to submit his federal tax returns for the years 1997, 1999, 2000, 2001 and 2002. The petitioner was given until July 20, 2003 to respond. The petitioner's response failed to include tax returns for 1997 and 2000. The petitioner also failed to include any other financial documentation establishing his continuing ability to pay the proffered wage during those years. Relying on 8 C.F.R. § 103.2(b)(13), the director considered the petition abandoned based on the petitioner's failure to submit all of the requested evidence.

While the director advised the petitioner that he could appeal to this office, a denial based on abandonment may not be appealed.<sup>1</sup> 8 C.F.R. § 103.2(b)(15). As there is no appeal from the instant denial, the AAO has no jurisdiction to issue a decision in this case and the appeal must be rejected.

**ORDER:** The appeal is rejected.

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<sup>1</sup> A petitioner or applicant may file a motion to reopen under 8 C.F.R. § 103.5(2) for the reasons identified therein. The official having made the latest decision in the proceeding (in this case--the director) would have jurisdiction to review a properly filed motion. A denial based on abandonment does not preclude a petitioner from filing a new petition.